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Attorneys for Defendant Pfizer Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANTICANCER, INC., a California limited
liability company,

Plaintiff,

vs.

PFIZER INC., a Delaware Corporation;
CROWN BIOSCIENCE, INC., a California
Corporation, and DOES 1-10,

Defendants.

Case No. 11 CV 0107 JLS (RBB)

**Pfizer's Application For Attorneys'
Fees And Costs**

Ctrm: Hon. Janis L. Sammartino

Application For Attorneys' Fees And Costs

The Court's Ruling On Pfizer's MSJ

1. On June 1, 2012, this Court granted in part and denied in part Defendant Pfizer's Motion for Summary Judgment of Noninfringement Based on Defective Infringement Contentions ("MSJ"). The Court found that "AntiCancer's PICs are deficient" and that "AntiCancer acted unreasonably in submitting these woefully insufficient PICs."¹ The Court further found that "AntiCancer was disingenuous in setting forth its theory of infringement with such vague PICs given it was made aware of the possible repercussions of insufficient PICs on at least two prior occasions in cases before this Court."² The Court also found that "it is ... too late in the lawsuit to allow AntiCancer to cure its deficiency without mitigating conditions."³ Consequently, the Court found that AntiCancer can amend its PICs only "on the condition that it reimburse Pfizer and CrownBio for the reasonable costs and attorneys' fees they incurred in litigating the instant motion [excluding any costs associated with the Court's request for supplemental briefing], which would not have been brought or litigated in this fashion but for AntiCancer's unreasonable conduct."⁴

2. As requested by the Court, Pfizer hereby submits this Application for Attorneys' Fees And Costs, setting forth the attorneys' fees and costs incurred in filing and litigating Pfizer's MSJ.

Fees And Costs Incurred By Pfizer

3. To determine a reasonable attorneys' fee award, the Supreme Court has directed trial courts to multiply the number of hours reasonably spent on the litigation by a reasonable hourly rate.⁵

¹ Docket No. 63 at 14.

² *Id.* at 14-15.

³ *Id.* at 15, internal citations omitted.

⁴ *Id.*

⁵ *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

4. In support of this fee application, Pfizer is filing under seal declarations from Richard de Bodo and Olga Berson (and supporting exhibits). The declarations set forth the nature and extent of the legal services DLA Piper LLP (US) provided to Pfizer in connection with the MSJ, the hourly rates DLA Piper charged, and the number of hours each DLA Piper attorney worked on the MSJ. As explained in the de Bodo and Berson Declarations, the attorneys' fees Pfizer seeks are based on reasonable billing rates multiplied by the number of hours reasonably spent on Pfizer's MSJ.

5. As detailed in the de Bodo Declaration, the fees and costs Pfizer incurred in connection with the MSJ totaled **\$186,838**.

6. In the Ninth Circuit, time spent preparing and litigating fee petitions is compensable.⁶ As detailed in the de Bodo Declaration, the fees and costs Pfizer incurred in connection with the instant application total over \$21,000, of which Pfizer seeks to recover **\$15,000**.

7. Pfizer's expenses relating to traveling to and participating in the May 31, 2012 hearing were **\$1,149**.

8. In total, Pfizer seeks to recover **\$202,987** in attorneys' fees and costs.

Dated: June 15, 2012

Respectfully submitted,

DLA Piper LLP (US)

By: s/Richard de Bodo
Richard de Bodo

Attorneys for Defendant Pfizer Inc.

⁶ See *Anderson v. Dir., Office of Workers Comp. Programs*, 91 F.3d 1322, 1325 (9th Cir.1996) (compensation for time spent litigating a fee petition "must be included in calculating a reasonable fee because uncompensated time spent on petitioning for a fee automatically diminishes the value of the fee eventually received."); *Matlink v. Home Depot & Lowes*, 2008 WL 8504767, * (S.D. Cal. 2008) (including in the fee award the hours spent preparing defendant's application for fees and related reply).

PROOF OF SERVICE

I am a resident of the State of California, over the age of 18 years, and not a party to the action. My business address is DLA Piper LLP (US), 2000 Avenue of the Stars, Los Angeles, CA 90067. On June 15, 2012, I served the within documents:

- 1. Pfizer's Application For Attorneys' Fees And Costs**
- 2. Exhibits 1 & 2 to Declaration Of Richard de Bodo ISO Pfizer's Application For Attorneys' Fees And Costs**

☒ I hereby certify that on June 15, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

On June 15, 2012, I also served the following documents on the counsel for AntiCancer, Inc. as indicated below:

- 1. Declaration Of Richard de Bodo In Support Of Pfizer's Application For Attorneys' Fees And Costs ("de Bodo Declaration");**
- 2. Declaration Of Olga Berson In Support Of Pfizer's Application For Attorneys' Fees And Costs ("Berson Declaration"); and**
- 3. Exhibit 3 to de Bodo Declaration.**

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- ☐ Via CM/ECF
- ☒ Via Email (PDF)
- ☐ Via First Class Mail
- ☐ Via Overnight Mail
- ☐ Via Hand Delivery
- ☐ Via Facsimile

Executed on **June 15, 2012**, at Los Angeles, California.

s/Richard de Bodo
Richard de Bodo